IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.1.2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.16064 OF 1996

Swami Sadananda Secretary,
Vivekananda Higher Secondary School,
Madras - 6. .. Petitioner

vs.

1. The Chief Educational Officer,
   Madurai -2.

2. The Joint Director of School Education,
   (Higher Secondary), Madras - 6.

3. M.Paneer Selvam .. Respondents

Writ Petition filed under Article 226 of the Constitution of India as stated therein.

For petitioner : Mr.R.Thiagarajan
Senior Advocate for
M/s.A.Sankarasubramanian

For respondents : Mr.C.Thirumaran
Government Advocate for R1 and R2
Mr.N.Subramani for R3

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The writ petition has been filed for the issuance of a writ of certiorarified mandamus to call for the records of the first respondent in Na.Ka.No.6251/A1/95, dated 6.12.1995, as confirmed by the second respondent's order, dated 25.6.1996, in Mu.Mu.No.1535/W7/96, quash the same and to direct the first respondent to give approval for the dismissal of the third respondent from service as Headmaster of the Vivekananda Higher Secondary School, Tiruvedagam West, Madurai District.

The brief facts of the case leading to the filing of the present writ petition are as follows:

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2. The third respondent was working as a Headmaster of the the Vivekananda Higher Secondary School, Tiruvedagam West, Madurai District. The then Chief Educational Officer, Madurai, N.Balammal, while on a visit to the School, on 30.3.1995, had noticed some grave errors committed by the third respondent. Even though the said students had really failed in their respective Annual Examinations, the third respondent had issued the Transfer Certificates to them, as though they had passed in the Annual Examinations. In the counterfoils of the candidates' Transfer Certificates, it had been mentioned that they were detained. The Then Chief Educational Officer had issued a letter, on 18.4.1995, asking the petitioner to take stringent disciplinary action against the third respondent, by giving him the maximum punishment, for the irregularities committed by him. It was also stated that such punishment should act as a deterrent to future incumbents to the Office of the Headmaster. Even before the receipt of the letter, the third respondent was placed under suspension, on 5.4.1995. A show cause notice had been issued to him and the following charges had been framed against him.

Charge No.1:- The third respondent got the Transfer Certificate prepared by Watchman S.Manoharan instead of by the concerned Clerk.

Charge No.2:- Issuing of false Transfer Certificate to one G.Ramasamy to the effect that he had passed VIIIth standard and was fit for joining IXth standard whereas really he had failed in VIIIth standard in 1993-1994.

Charge No.3:- Issuing of false Transfer Certificate to one Kasilingam to the effect that he had passed IXth standard in 1993-1994 whereas he had failed in that class. In the counterfoil column 9, it has been stated that he did not pass.

Charge No.4:- The third respondent issued the false Transfer Certificates to Suresh Babu, Kumarasamy Raja and R.Sivakumar, as though they had passed IXth standard in 1993-1994, whereas they had actually failed and in the Register of Marks they have been shown as detained.

Charge No.5:- The third respondent took away the statements given by G.Ramasamy and Kasilingam, which should have been retained in the Office.

3. On receiving the charge memo, the third respondent had submitted his explanation, on 10.6.1995. After receipt of the explanation, the School Committee had conducted an oral enquiry, on 16.6.1995. Both in his explanation, dated 10.6.1995, and in the enquiry conducted thereafter, the third respondent had admitted to the issuing of the false Transfer Certificates. However, the third respondent had stated that the said Transfer Certificates had been issued only on the instructions of V.S.Narasimhan, who was the Administrator of the School. The School Committee had rejected the explanation submitted by the third respondent in its meeting, dated 18.7.1995, and it had held that the charges against the petitioner had been proved. A show cause notice was issued to the third respondent with regard to the proposal to dismiss him from service. The third respondent did not submit any reply to the said notice. The School Committee had again met, on 8.8.1995, and decided to dismiss the

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third respondent from service and had sought for permission from the first respondent, who is the Competent Authority, in accordance with Section 22 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. The first respondent, after a delay of nearly four months, had passed an order, on 6.12.1995, refusing to grant the approval.

4. An appeal was filed to the second respondent against the order of the first respondent, on 27.12.1995. After a delay of about six months, the second respondent had passed an order, on 25.6.1996, dismissing the appeal. Thereafter, the petitioner had filed a revision petition before the Government of Tamil Nadu, on 12.7.1996, under Section 45(1) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. In the meantime, the first respondent had issued a letter, dated 8.9.1996, stating that the third respondent should be restored to the post of Headmaster within a month from the date of receipt of such letter and had also stated that the third respondent should be paid the back wages.

5. In the counter affidavit filed on behalf of the respondents 1 and 2, it has been stated that the petitioner and the School Committee of the petitioner School did not follow the Rules and Regulations of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, and Rules 1974 as detailed below. In Rule 13(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1973, it has been clarified that the Secretary should act on the basis of the resolutions passed at the meeting of the School Committee. Contrary to this Rule, M.Panneer Selvam, the third respondent herein, has been suspended from his service from 5.4.1995 fore noon by the Secretary without passing a resolution in the School Committee before issuing the suspension order suspending him. The third respondent has also been suspended from 5.4.1995, when he was attending the +2 Central Valuation (Government) work on that day.

6. It has also been stated that with reference to the Rule 12(3) (i) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1973, and G.O.Ms.No.1502, Education, dated 23.9.1988, a member representative of the Parent- Teachers Association should be nominated in the School Committee of the petitioner School. However, contrary to the said Rule, the School Committee of the petitioner School has been functioning without nominating a member representative of the Parent-Teachers Association. Hence, the resolutions passed by the School Committee to suspend and terminate the third respondent are invalid.

7. It is also further stated that as per Rule 14 (1) & (2) of the Tamil Nadu Private Schools (Regulation) Rules, 1974, the meeting of the School Committee should be convened by the Secretary of the School Committee only with the approval of the President of the School Committee. No meeting of the School Committee shall be conducted without giving at least 7 days clear notice in writing to the members of the School Committee. But the Secretary of the School, had convened the School Committee, on the after noon of 5.4.1995, to get the ratification for his

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action of having suspended the third respondent with the approval of the School Committee. The Secretary had convened the School Committee meeting without prior approval of the President of the School Committee as per the Rules and without giving at least 7 days clear notice in writing to the members of the School Committee. Without the presence and knowledge of the President of the School Committee, the Secretary has convened the School Committee meeting, which is contrary to the existing Rules.

8. It is also stated that, with regard to paragraph 7(c) and (d) of the Annexure VII A of Rules 15 of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, it has been clearly instructed that as per the agreement executed between the School Committee and the Headmaster, after conducting the enquiry by the School Committee, the report of such enquiry should be furnished to the accused person, setting out the proposed punishment and he should be given a reasonable time to defend himself against the proposed punishment. After the receipt of the statement of defence from the accused person and taking it into consideration, the School Committee should inform him in writing about its final decision. However, the Secretary had not furnished any enquiry report of the School Committee to the accused person to defend himself against the proposed punishment. Without getting any defence statement on the enquiry report from the third respondent, the School Committee had come to the final decision to terminate the third respondent against the Rules and contrary to the principles of natural justice.

9. It is also stated that no prior permission had been obtained to terminate the 3rd respondent from his service. The first respondent had thoroughly verified all the records produced by the petitioner, with reference to the Rules in force before passing the order in his Rc.No.6251/A1/95, dated 6.12.1995, refusing permission to terminate the 3rd respondent.

10. It has been further stated that, challenging the order of the first respondent, the petitioner had filed an appeal to the second respondent. The second respondent had passed orders in Mu.Mu.No.1535/W7/96, dated 25.6.1996, confirming the orders of the first respondent. Before passing the orders, the first and the second respondents have thoroughly verified the records and all other relevant facts involved in the case and the Rules in force. The respondents have never acted and passed the orders by the compulsion of outsiders, as stated by the petitioner. The petitioner has pointed out in his petition that the first and second respondents did not hold the enquiry in a proper manner. In this connection it has been submitted that no enquiry could be conducted by the respondents, as there is no provision in the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973, to conduct an enquiry on the proposals received from the Secretary of the concerned School requesting for permission to terminate the teachers working in such aided Schools. With reference to Rule 22 of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973, if the Competent Authority is satisfied

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that there are adequate and reasonable grounds on the proposals received from the School Committee, requesting for permission to terminate the teachers, the Competent Authority shall approve such termination. According to this Rule, there was no adequate or reasonable grounds for the termination of the third respondent and so the respondents had passed orders refusing the permission to terminate the third respondent. Hence, the action taken by the first respondent is correct and within the provision of the Rules and natural justice.

11. During the course of arguments, the learned senior counsel Mr.R.Thiagarajan, appearing on behalf of the petitioner, had submitted, that the proceedings of the first respondent in Na.Ka.No.6251/A1/95, dated 6.12.1995, as confirmed by the second respondent's order, dated 25.6.1996, in Mu.Mu.No.1535/W7/96 is vitiated, inter alia, for the reason that the first respondent, while passing the impugned proceedings, had relied on the report of the District Educational Officer, Madurai, Na.Ka.No.3508/A4/95, dated 24.11.1995. It was done without giving the Management of the petitioner School an opportunity of hearing.

12. In support of his contentions, he had relied on the decision of the Supreme Court in SWADESHI COTTON MILLS ETC., Vs. UNION OF INDIA ETC., (AIR 1981 S.C. 818) in which it was held that the audi alteram partem rule, is a very flexible, malleable and adaptable concept of natural justice. To adjust and harmonise the need for speed and obligation to act fairly, it can be modified and the measure of its application cut short in reasonable proportion to the exigencies of the situation. Thus, in the ultimate analysis, the question, as to what extent and in what measure this rule of fair hearing will apply at the pre-decisional stage will depend upon the degree of urgency, if any, evident from the facts and circumstances of the particular case.

13. With regard to the application of the principles of natural justice to different situations, it was contended that since no opportunity was given to the Management of the petitioner School and since much reliance has been placed by the first respondent on the said report, the entire order passed by the first respondent, without following the principles of natural justice, cannot be held to be valid in the eye of law. Therefore, the order of the second respondent, dated 25.6.1996, confirming the order of the first respondent, should also be held to be arbitrary and illegal. Therefore, it is prayed that the impugned orders ought to be set aside and the matter remitted back to the first respondent to pass a fresh order, after giving sufficient opportunity to the Management of the petitioner School as well as to the third respondent.

14. Further, the learned senior counsel appearing for the petitioner had submitted that once the main charge was admitted by the third respondent and when such a charge is serious in nature, there is no scope for any leniency being shown to the third respondent, who was the Headmaster of the petitioner School at the relevant time. If such leniency

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is shown, it would seriously jeopardise the moral fibre of the School administration and it would set a wrong example for the students, who were of impressionable age. Further, even if it is taken to be, without admitting, that the School Committee did not have a parent-teachers nominee, as contemplated under Section 15 of the Tamil Nadu Private Schools (Regulation) Act, 1973, and even if the Rules 12 and 14 were not complied with in full, it cannot vitiate such actions, which are taken in good faith, by the School Administration, especially, when it is against a delinquent official, who was vested with a very high responsibility of Management, managing the day-to-day affairs of the School. Once it is stated that the Committee is empowered to decide, if there is a quorum, it would only go to show that all the members of the Committee need not be present to take such a decision. Since, out of the eleven members, seven of them had attended the Committee meeting, while the decision to remove the third respondent was taken. If such a view is taken, no administration can be done in the absence of even one member of the Committee and it would lead to total chaos in the process of administration.

15. On the other hand it was submitted on behalf of the third respondent that the decision of the School Committee to dismiss the petitioner from service is wrong, since it was based on a wrongful order of suspension. Further, Parent- Teacher Members of the Committee had not been nominated, which vitiates the entire process of the School committee. Further, the Secretary of the Committee had convened the meeting, contrary to the provisions of law, without the approval of the President. Further, it was only one charge, which had been made into several charges, to show the third respondent in bad light, as though he had committed grave irregularities, which deserves such extreme punishment. Further, no second show cause notice was issued to the second respondent, as alleged.

16. On a perusal of the records available and on analysing the rival contentions raised on behalf of the petitioner as well as the respondents, it is clear that the School Committee had not been constituted, as contemplated by the provisions of the Tamil Nadu private Schools (Regulation) Act, 1973. Further, the first respondent had passed an order, dated 6.12.1995, declining the approval for the punishment of dismissal from service imposed on the third respondent by the petitioner Management after giving detailed reasons. Even though the first respondent, as seen from his order, has relied to some extent on the report of the District Educational Officer, Madurai, dated 24.11.1995, that by itself cannot be a valid ground for the petitioner to seek an order from this Court to set aside the order of the first respondent. It cannot be said that the principles of natural justice have been violated to such an extent that the order of the first respondent, dated 6.12.1995, deserves to be set aside as arbitrary and illegal.

17. The learned counsel appearing on behalf of the petitioner could not show real prejudice having been caused by the non-supply of the report and by not being heard before the impugned order was passed. In such

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circumstances, this Court cannot disturb the factual findings of the first and the second respondents. Further, no specific ground has been raised either at the stage of the appeal before the second respondent or in the present writ petition, stating that the audi alteram partem rule has been infringed, though a general statement has been made in paragraph 5 of the affidavit filed by the petitioner in support of the writ petition.

18. In such view of the matter, this Court is not persuaded to set aside the orders passed by the respondents in declining approval for the decision taken by the School Committee of the petitioner School to remove the third respondent from service from the post of the Headmaster of the school. Therefore, the writ petition stands dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Chief Educational Officer,
   Madurai -2.

2. The Joint Director of School Education,
   (Higher Secondary), Madras - 6

1 cc To Mr.M.Sankar Subramanian, Advocate, SR.4958.
1 cc To Mr.N.Subramani, Advocate, SR.5345.

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